

6/14/04 - (12)

Don Johnson

From: Don Johnson
Sent: Tuesday, June 08, 2004 9:47 AM
To: Peter Berry I; Peter Berry II
Cc: Community Preservation Committee; Board of Selectmen
Subject: Meeting With Board of Selectmen

Peter:

At last night's Selectmen's Meeting the Board had a brief discussion of the Draft "Letter to CP Fund Recipients" that your Committee is currently preparing. This letter gave rise to several policy questions that the Board has as to the role and responsibilities of the CPC after Town Meeting actions are completed on the Committee's recommendations. The discussion, although considerably more abbreviated, was very similar to the discussion John Murray and I had with the CPC when we met on May 6.

In the final analysis, the Selectmen requested that you and the CPC be invited to join the Board for an "Oversight" meeting at the Board's next scheduled meeting, June 14, at 8:45 PM. The Board wishes to review policy issues implicit in your draft letter and, to that end, has asked that the CPC refrain from issuing the draft letter until after the Oversight Meeting.

Regards,
Don

6/11/2004

**Letter to CP Fund Recipients
DRAFT**

June, 2004

Dear [Recipient],

Congratulations on being a recipient of Community Preservation funds for the Spring 2004 cycle. The Community Preservation Committee greatly appreciates your effort and cooperation during this inaugural year of allocating CP funds.

As we move forward, the Committee wishes to clarify some important points:

- All CPA funds are administered and disbursed by the Town of Acton. Spending of CPA funds must abide by all applicable State and municipal requirements, including the State procurement law, which requires special procedures for any expenses over \$5000.00. John Murray, Town Treasurer, will answer any questions regarding these processes. He can be reached at (978) 264-9612. If you know of a Town staff person who is assigned to your project, please handle all questions through her or him.
- Good publicity for your project is very important. It will be exciting for Acton citizens to know where their CPA funds are being spent. Therefore, the Committee encourages the following:
 - Please make every effort to credit the source of this funding in all promotional materials with, **"This project has been generously supported by the Town of Acton Community Preservation Fund."**
 - If applicable, post a sign at your project site with the above wording while work is being conducted.
 - Send a letter to the Beacon detailing how the CP funds have impacted your project.
- Before you start the project please send the Committee a notice of when you will start, including the firms hired (if any), a project scope, project budget, and expected savings to the Community Preservation Fund (if any).
- Every six months until the project is completed, please submit to the Committee a progress report on your project.

Please contact the Committee with any questions via email at cpc@acton-ma.gov or by calling the Planning Department at (978) 264-9636. Thank you for working in partnership with the CPC to make a significant and lasting difference in our town.

Sincerely,

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Peter J. Berry
Chair
Community Preservation Committee

Don Johnson

From: Peter Berry I
Sent: Friday, April 30, 2004 9:23 AM
To: Don Johnson; Peter Berry II
Cc: Community Preservation Committee; Board of Selectmen; Stephen Anderson
Subject: RE: Acton/Gen-Sel: Community Preservation Projects

Don and Selectmen: Beyond the strict legalities, the CPC may feel it should be involved in knowing about and possibly making recommendations on expenditures, particularly those which were not clearly identified in the proposals. For instance, the ACHC received \$25,000 for promotion of affordable housing opportunities. When we interviewed the ACHC about their application they assured the CPC that any final proposals for spending those funds would be vetted through the CPC before the plans for using those funds were finalized. This was true also for the AHA's proposal to purchase two condominium units. For the flag, the library presented an estimate from a vendor to support their cost proposal. If the vendor changes because of the public bid process, obviously the new vendor's scope of work and expertise should be consistent with the original proposal. It's my sense that the CPC may want to stay involved, at least to the extent that we are aware of the proposals to spend these funds and can make a recommendation to the BOS about the use of the funds being consistent with the purposes of the proposals. This will be on the agenda for the next meeting also.

-----Original Message-----

From: Don Johnson [mailto:djohnson@acton-ma.gov]
Sent: Friday, April 30, 2004 8:52 AM
To: Peter J. Berry; Peter Berry II
Cc: Community Preservation Committee; Board of Selectmen
Subject: FW: Acton/Gen-Sel: Community Preservation Projects

Peter:

I have been peripherally aware that folks may have some question as to how CPA funds are disbursed and who oversees the Town-Meeting approved projects following appropriation by Town Meeting. As the Town's Chief Procurement Officer, I was concerned when there appeared to be opinions that the CPA Funds were somehow different than other public funds. I was fairly certain as to how these matters should be handled but, just to be sure, I went to Town Counsel for an official opinion. His opinion is below.

The recent dialogue with the Library Director, wherein she proposed to pay an advance on the restoration project approved for the Library was a good example. The mere fact that this financing comes from the CPA Fund does not give anyone the ability to violate the procurement laws by making advance payments for goods and services that have not yet been rendered. She, and I, still carry the responsibility for seeing that these funds are expended properly and for the purpose for which the legislative body, Town Meeting, made the appropriation. Once appropriated, these funds look exactly like any other appropriation made by Town Meeting and, both by Charter and by virtue of being the Town's Chief Procurement Officer, I am responsible for insuring the integrity of the process, going forward. That was the point I was making to the Library Director and that is the assurance I will be making to the CPC when we meet on May 6.

Regards,
 Don

-----Original Message-----

From: Stephen Anderson
Sent: Friday, April 02, 2004 9:11 AM
To: Don Johnson
Cc: John Murray; Daniel C. Hill
Subject: Acton/Gen-Sel: Community Preservation Projects

Dear Don:

In response to your inquiry, once a CPC project is funded by Town Meeting, the administration of that project devolves to the Board of Selectmen and the Town Manager for the following reasons:

1. Under Chapter 44B, the CPC is charged with studying the "needs, possibilities, and resources of the ... town regarding community preservation" (§ 5(b)(1)), making recommendations for CPA fund expenditures (§ 5(b)(2)), and keeping records of its recommendations, and all appropriations and expenditures from the municipality's community preservation fund, and all property interests acquired with such funds (§ 13).

2. The CPC has no express statutory authority to administer the projects that are funded with CPA funds. Indeed, Chapter 44B, § 6, imposes strict limitations on the use of Community Preservation Funds for administrative and operating purposes: "In each fiscal year, the legislative body shall make such appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee, but the appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund."

3. DOR has described the CPC's role as "analogous to that of a capital planning committee in developing a multi-year capital improvement plan for a community and presenting an annual capital budget to its legislative body." IGR 00-209 (as amended), p. 23.

4. By contrast, Article 4-1(b) of the Town Charter expressly provides that the "executive powers of the town shall be vested in the board of selectmen, who shall have all the powers given to boards of selectmen by general laws or otherwise." Because the selectmen "shall serve as the chief goal-setting, planning and policy-making agency of the town" it shall "not normally administer the day-to-day affairs of the town" (Charter, Article 4-1(b)). Rather, the Board of Selectmen shall "act through the adoption of policy directives which are to be implemented by officers and employees appointed by or under its authority" (id.).

5. The chief employee appointed by the Selectmen is the Town Manager who "shall be responsible for the management of town agencies and the supervision of town employees with the exception of school employees ..." (Charter, Article 4-3(g)(1)). Without limitation, the Town Manager has the following "powers and duties" under the Charter:

- "The town manager shall be responsible for the preparation of plans and the supervision of work on existing and on new buildings and grounds, unless a special committee of the town is created for such purpose." (Article 4-3(g)(5));

- "The town manager shall ... award all contracts needed for the operation of the town agencies except the school department." (Article 4-3(g)(6));

- "The town manager shall administer all provisions of the general laws and special laws applicable to the town, the by-laws and votes of the town, and all rules and regulations made by the selectmen which lie within the scope of the powers and duties of the office." (Article 4-3(g)(8));

- "The town manager shall perform such other duties consistent with the office as may be required by by-law, vote of the town or selectmen." (Article 4-3(g)(10)).

6. Of course, in implementing an approved CPC project and expending the appropriation for that project, the Selectmen and the Town Manager must carry out the CPC's recommendations as adopted by the Town Meeting (Chapter 44B, § 7). Thus, the "expenditure of revenues from the fund shall be limited to implementing the recommendations of the community preservation committee and providing administrative and operating expenses to the committee;" the "authority to approve expenditures from the fund shall be limited to the legislative body;" and the municipal treasurer shall pay such expenses in accordance with chapter 41."

7. Under Chapter 41, § 35, the Treasurer "shall receive and take charge of

all money belonging to the town, and pay over and account for the same according to the order of the town or of its authorized officers."

In conclusion, under Chapter 44B and the Town Charter, the CPC makes recommendations to Town Meeting for CPA fund expenditures, the Town Meeting approves those expenditures, the Selectmen and the Town Manager carry out those approved projects, and the Treasurer pays over the funds in accordance with the Town Meeting's appropriation as implemented by the Selectmen and the Town Manager.

If you have any question, please call me. _____ Stephen D. Anderson

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